Editor's note: Reconsideration denied by order dated April 7, 1975

A. W. BROTHERS

IBLA 75-150 Decided March 7, 1975

Appeal from letter decision of the Utah State Office, Bureau of Land Management, denying request for modification or removal of special stipulations attached to a proposed public airport lease.

Affirmed.

1. Airports--Administrative Authority: Generally-- Public Lands: Leases and Permits

   The issuance of a public airport lease on national resource lands lies within the discretion of the Secretary of the Interior. The Department may require an applicant for a public airport lease to accept special stipulations in order to protect the environmental quality of the land, so long as the stipulations are not inconsistent with other reasonable requirements of the Bureau of Land Management or Federal Aviation Administration.

APPEARANCES: A. W. Brothers, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

A. W. Brothers has appealed from a letter decision of the Utah State Office, Bureau of Land Management (BLM), dated August 7, 1974, denying his request to remove or modify special stipulations attached to a proposed public airport lease.

Pursuant to the Act of May 24, 1928, as amended, 49 U.S.C. §§ 211-14 (1970), appellant filed amended public airport lease application U-20189 with the BLM on August 28, 1972, for lands in sec. 31, T. 13 N., R. 13 W., S.L.M., Utah. On September 7, 1972, the BLM referred appellant's application to the Federal Aviation Administration (FAA) for recommendations regarding the desirability of approving the application, the suitability of

the lands for airport purposes, and the facilities for service, fuel, and other supplies necessary to make the lands available for public use as an airport. By letter response dated November 21, 1972, the FAA indicated that a public airport at the proposed location would be desirable and offered no objection to issuance of a lease. Attached to the letter was a copy of the FAA's airspace clearance determination regarding appellant's proposed runways. The FAA had no objection to this proposal, stating that the airport would not adversely affect the safe and efficient use of airspace by aircraft. The FAA further stated that its determination did not waive the requirements of other government agencies and that its airspace approval did not indicate that the proposed airport development was environmentally acceptable.

In a memorandum dated March 7, 1973, the District Manager, Salt Lake City, informed the State Director that appellant was requesting immediate action on his airport lease application as a landing strip was needed for use in conjunction with the maintenance of telephone lines owned by appellant's utility company, the Silver Beehive Telephone Company. The District Manager stated that the site applied for already had an existing landing strip which had been used in the past by appellant who was attempting to legalize his use. In a subsequent memorandum dated May 25, 1973, the District Manager informed the State Director that appellant, on approximately April 1, 1973, had constructed, with a road grader, a new landing strip 45 feet wide and 1/2 mile long on national resource lands within section 31. (An additional 1/4 mile was constructed on State land.)

On November 9, 1973, the BLM received a copy of a letter sent to appellant by the Utah Department of Development Services, Division of Aeronautics, agreeing to license the proposed airstrip provided appellant received approval from the BLM for such aeronautical activities. On April 25, 1974, the District Manager approved an environmental analysis record which had been developed for the proposed airport site. The environmental report recommended issuance of a lease upon the conditions that the old and new landing strips be shortened in order to protect persons traveling along an adjacent state highway, and that the airstrips be seeded to crested wheatgrass to provide groundcover for watershed protection and livestock forage.

On May 28, 1974, the BLM sent appellant a proposed airport lease with special stipulations attached. On June 10, 1974, the BLM received a letter from appellant objecting to the terms and conditions of the proposed lease. Appellant returned the lease form with numerous suggested deletions and modifications. Appellant specifically objected to special stipulations regarding land preservation and airport safety, and stated that "[a]ll references

to try to regulate how and what of [sic] construction in this lease should be removed. The printed form [standard public airport lease form 2910-1, February 1973] says that FAA shall dictate the rules, etc. This is sufficient." Appellant requested that the BLM issue a revised lease.

In a memorandum dated June 25, 1974, the State Director informed the District Manager that some of the terms of the lease had been reconsidered and that the FAA had been contacted on the matter. The FAA recommended that all dirt airstrips be seeded, mowed, and rolled to prevent soil erosion for safety reasons, and that the airstrips be located at least 400 feet from any roads or highways.

On July 1, 1974, the BLM informed appellant that the terms and conditions of the proposed lease had been reconsidered by the District Office in conjunction, in part, with FAA advice, and that several changes had been made. A copy of the revised lease, which included 34 special stipulations, was transmitted to appellant and he was given 30 days to accept, otherwise the application would be closed with 60 days permitted for rehabilitation of the area.

On July 18, 1974, appellant once again returned the proposed lease with further deletions and corrections requesting that the lease be revised. By letter decision dated August 7, 1974, the BLM denied appellant's request for further revision of the lease. In his Statement of Reasons on Appeal, appellant objects to the imposition of the special stipulations.

Appellant has enclosed a revised proposed lease with the minimum modifications acceptable. The proposed lease deletes all of Stipulation #34, which requires submission of a performance bond in the amount of $500, and modifies Stipulation #9, which requires that the portion of the constructed landing strips within 400 feet of an adjacent state highway be closed to aircraft use and seeded to crested wheatgrass.

We have examined all of the special stipulations and find them reasonable. As to the two appellant most strenuously opposes, we find the requirement for a bond to be consistent with regular BLM policy. Next, the seeding of airstrips is necessary to control erosion and is strongly recommended by the FAA. Similarly, closing that part of the airstrip within 400 feet of the highway to aircraft use reflects a proper concern for safety.

[1] We hold that the BLM's rejection of appellant's request to revise the terms and conditions of the lease was proper. The BLM may require appellant to accept special stipulations imposed as a means to mitigate damage to the leased lands, so long as the

stipulations are not inconsistent with other reasonable requirements of the BLM or FAA. Nevada Flyers, 18 IBLA 165 (1974); Nevada Flyers, 10 IBLA 311 (1973); cf. Northwestern Colorado Broadcasting Co., 18 IBLA 62 (1974); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972); Quantex Corp., 4 IBLA 31, 78 I.D. 317 (1971). 1/ The issuance of a public airport lease on national resource lands lies within the discretion of the Secretary of the Interior. 49 U.S.C. § 211 (1970). Accordingly, if a conflict occurs between the need for environmental protection and the need for compliance with FAA recommendations, the BLM may either delete or modify its proposed stipulations if resulting damage would be insignificant, or it may choose not to issue a lease in order to assure adequate environmental protection of the land.

1/ We call the State Office's attention to the recent case of Nevada Flyers, 18 IBLA 165 (1974). In that case the Board thoroughly reviewed the FAA referral procedures which are required by the Act of May 24, 1928, the regulations promulgated thereto, the BLM Manual and applicable Departmental decisions. As in Nevada Flyers, we note here that the BLM failed to follow some of the required FAA referral procedures. In Nevada Flyers we held that requirements concerning the establishment, maintenance and use of a public airport on national resource lands should be made by the FAA and BLM, respectively, for matters committed to each. In the present case, upon receipt of appellant's application, the BLM requested FAA recommendations regarding facilities for service, fuel, and other supplies necessary to make the lands suitable for public use as an airport. The FAA response only spoke to the issue of airspace clearance. In the event appellant chooses to pursue his application for a lease, the BLM is directed to inform the FAA of our view that it is authorized to set public airport improvement standards in accordance with FAA requirements even though the proposed airport is situated on national resource lands. Id. at 174. Furthermore, since the Act of May 24, 1928, requires that airports on leased national resource lands be open to public use, the BLM is directed to request FAA recommendations regarding effective maintenance and safety requirements in order to insure efficient use and eliminate unsafe conditions for the protection of the public. Id. at 173. The BLM is also directed to request FAA advice and recommendations with regard to all proposed BLM special stipulations dealing with matters encompassed by FAA expertise. If, upon consultation, the FAA states that it has no additional requirements for public airports of this general class, the BLM will evaluate the lease in light of that determination.

Therefore, pursuant to the authority vested in the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge